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COMMISSION ON THE STATUS OF WOMEN
Forty-first session
Open-ended Working Group on the
Elaboration of a Draft Optional
Protocol to the Convention on
the Elimination of All Forms of
Discrimination against Women
10-21 March 1997
Agenda item 5

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Revised draft optional protocol submitted by the Chairperson on the basis of the compilation text contained in document E/CN.6/1997/WG/L.1 and proposals made at the forty-first session of the Commission (Part I)

Article 1

A State party [to the Convention that becomes a party] [that has signed and ratified the optional protocol] to the present Protocol recognizes the competence of the Committee to receive and [consider] [examine] communications [from individuals] [or groups of individuals] [subject to its jurisdiction] [concerning any of the rights set forth in the Convention] [who claim to be victims of a violation by that State party of any of the rights set forth in the Convention] [submitted in accordance with article 2].

[2. No communication shall be received by the Committee if it concerns a State [party to the Convention] that is not a party to this Protocol.]

Article 2

1. Communications may be submitted

(a) By [or on behalf of] [an] individual[s], group [of individuals] [or organization] [under the jurisdiction of a State party] claiming [to have suffered from a violation of any of the rights in the Convention] [that any of the rights enumerated in the Convention have been violated] [or claiming to be directly affected by the [deliberate] failure of [a] [that] State party to comply with its obligations under the Convention].

Alternative 1

[Communications may be submitted by individuals [[[and] [groups of individuals] with specific interest in women's welfare, particularly women's rights]], [[his/her organization or group of victims] and who observe or claim that the rights enumerated in the Convention have been violated]].

Alternative 2

[Communications may be submitted by an individual or group of individuals under the jurisdiction of a State party], [claiming that any of her/their rights enumerated in the Convention have been violated by that State party] [claiming to have suffered from a violation of any of the rights in the Convention], [and who has/have exhausted all available domestic remedies] [who can demonstrate that all available domestic remedies have already been exhausted].

(b) By [an individual, group or organization claiming that a State party has violated any of the rights set forth in the Convention or has failed to comply with its obligations under the Convention, if in the opinion of the Committee this person, group or organization has sufficient interest in the matter.]

Alternative 1

[an individual, group or organization with a sufficient/established interest in the matter on behalf of an individual or group of individuals claiming that a State party has violated any of the rights set forth in the Convention.]

Alternative 2

[on an exceptional basis, the communication may be submitted by:

(i) A duly designated representative of the victim or victims;

(ii) An individual or group of individuals acting on behalf of a victim or victims in circumstances where the victim is unable to act herself or to designate a representative/an individual or group of individuals acting on behalf of a victim or victims that has established that it is impossible for the person or persons affected to submit the communication or to designate a representative.]

Alternative 3

By [association or non-governmental organizations whose purpose is to defend women's rights and which have obtained the agreement of the person or persons

claiming to have suffered from a violation of one of the rights set forth in the Convention.]

Article 3

Communications shall be in writing and shall not be anonymous.

Article 4

Alternative 1

1. The Committee shall not declare a communication admissible unless it has ascertained that all available [legal] domestic remedies have been exhausted [in accordance with generally recognized rules of international law]; [this shall not apply where the Committee considers the application of the remedies to be [unreasonably prolonged] [unreasonable] or unlikely to bring effective relief] [unless the claimant demonstrates that such remedies are ineffective or that the application of the remedies has been unduly prolonged];

2. The Committee shall declare a communication inadmissible:

(i) That it considers to be incompatible with the provisions of the Convention;

(ii) That it considers to be an abuse of the right to submit a communication;

[(iii) That it considers to be manifestly ill founded] [or obviously politically motivated];

[(iv) That relates to facts that occurred before the entry into force of this Protocol for the State party concerned, [unless those facts continued after the entry into force of this Protocol for the State party]];

(v) Where the same matter [has been] [taken note of] [or] is being [examined] [considered] under another procedure of international investigation or settlement.

[3. A communication shall be in compliance with the principles of objectivity and impartiality [and should include information of legal remedies or reparation undertaken by the State party concerned]].

Alternative 2

A communication shall be inadmissible where, in the view of the Committee:

(i) It is incompatible with the provisions of the Convention;

(ii) It is an abuse of the right to submit a communication;

[(iii) It is manifestly ill founded] [or obviously politically motivated];

(iv) All available [legal] domestic remedies have not been exhausted [in accordance with generally recognized rules of international law] [unless in the view of the Committee the application of the remedies is [unreasonably prolonged] [unreasonable] or unlikely to bring effective relief] [unless the claimant demonstrates that such remedies are ineffective or that the application of the remedies has been unduly prolonged];

[(v) The facts that are the subject of the communication occurred prior to the entry into force of this Protocol for the State party concerned, [unless those facts continued after that date]];

(vi) The same matter [has been] [taken note of] [or] is being [examined] [considered] under another procedure of international investigation or settlement;

[(vii) It is in compliance with the principles of objectivity and impartiality [and includes information of legal remedies or reparation undertaken by the State party concerned]].

Article 5

[1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may [request] [recommend] the State party concerned to take interim measures [as appropriate] [as may be necessary] [to preserve the status quo and] to avoid [possible irreparable] [further] [harm] [damage] [if any] [to the victim or victims of the alleged violation] [after it has been determined that sufficient evidence exists to substantiate the claim].]

[2. The State party concerned [may] [shall] [give due consideration to] consider [urgently and positively] the recommendation under paragraph 1.]

[2 bis. Where the Committee exercises its power under paragraph 1, this does not imply a determination [on admissibility] [or the merits] of the communication.]

Article 6

[1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under this Protocol confidentially to the attention of the State party concerned. The Committee may in exceptional cases involving a threat to the life or physical integrity of the [individual or individuals who is/are the subject of the communication] [author or victim]

withhold [her/their] or [her identity or identities] [identity] during consideration of protective interim measures.]

Alternative 1

[The State party should be informed confidentially of the communication. The identity of the individual should also be revealed to the State party unless the individual objects.]

Alternative 2

[The Committee may bring any communication admitted by it under this Protocol confidentially to the attention of the State party concerned, but shall not reveal the identity of the author unless prior consent is given.]

2. Within [three] [six] months, the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State party.

[3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect of the rights and obligations set forth in the Convention] [in the event of agreement between the parties, the Committee shall adopt findings taking note of the settlement of the matter].

Article 7

1. The Committee shall consider communications received under this Protocol in the light of all [written] information made available to it by [or on behalf of] the [author] [individual] and by the State party concerned. [The Committee may also take into account information obtained from other [United Nations] sources, provided that this information is transmitted to the author and the State party for comment.]

2. The Committee shall hold closed meetings when examining communications under this Protocol.

[2 bis. When a communication is being considered, the State party concerned shall be entitled to take part in the proceedings of the Committee and to make submissions orally and/or in writing.]

3. After examining a communication, the Committee [shall adopt its views [together with any recommendations] on the communication and] shall transmit [these] [its views] to the State party [concerned] and to the [individual[s]] [victim].

Alternative 1

3. After examining a communication, the Committee [shall adopt its views [together with any recommendations] [including, where appropriate, specific

measures] on the communication and] shall transmit [these] [its views] to the State party [concerned] and to the [individual[s]] [victim].

Article 8

[1. The Committee may request that the State party concerned take specific measures to remedy any violations or failure to give effect to its obligations under the Convention.]

[2. The State party shall take all steps necessary to remedy any violation of rights or failure to give effect to its obligations under the Convention. The State party shall ensure that appropriate remedy including, if need be, adequate reparation, is provided.]

[3. Within [three] [six] months the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy that has been implemented by the State party.]

Alternative 1

[Within [three] [six] months the receiving State party shall submit to the Committee a written response to the views of the Committee including explanation of any action taken in the light of its recommendations].

Article 9

[1. The Committee may invite the State party concerned to discuss with it the measures that that State party has taken to give effect to the views, suggestions or recommendations of the Committee.]

[2. The Committee may invite the State party concerned to include in its subsequent report under article 18 of the Convention details of any measures taken in response to the Committee's views, suggestions and recommendations.]

Alternative 1

[2. The Committee may invite the State party to submit further information about any measures the State party has taken to give effect to its views or recommendations, including as deemed appropriate by the Committee, in the State party's subsequent report under article 18 of the Convention.]

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Agenda item 5

ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Chairperson's summary

1. The Open-ended Working Group of the Commission on the Status of Women on the Elaboration of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women held __ informal meetings to consider the Chairperson's non-paper on an optional protocol, contained in document E/CN.6/1997/WG/L.1. The Working Group requested the Chairperson to prepare a summary of the discussions held during the informal meetings for inclusion in the report of the Working Group.

2. Throughout the informal meetings, the Working Group benefited from the comments of and replies to questions by Ms. Silvia Cartwright, a representative of the Committee on the Elimination of Discrimination against Women who participated in the Working Group as a resource person in accordance with Economic and Social Council decision 1996/241. She explained the Committee's current working methods and the responsibilities entrusted to it in accordance with article 17 of the Convention.

3. With the agreement of the Working Group, the Chairperson also called on non-governmental and intergovernmental organizations to make statements on the substance of a matter.

4. The following reflects the Chairperson's understanding of the discussions of the Working Group on the draft contained in document E/CN.6/1997/WG/L.1, arranged on an article-by-article basis. The Chairperson wishes to note that, since no agreement has yet been reached in the Working Group on the question of standing and on the terminology regarding complainants, any such references in the following summary are without prejudice to the final outcome of the work of the Working Group.

Preamble

5. The Working Group agreed that the optional protocol would be preceded by a preamble. Many delegations expressed a preference for a short, succinct preamble. Since the preamble would be expected to reflect the content of the optional protocol, it was agreed to revert to it once the body of the optional protocol had been agreed upon.

Article 1

6. Many delegations expressed a preference for a concise article 1, limited to the question of the Committee's competence to receive and consider communications, as proposed in document E/CN.6/1997/WG/L.1. The Working Group agreed ad referendum to that, although some had felt that the article should be expanded to address also the question of standing. The addition of a reference that communications would be submitted in accordance with the provisions of the present protocol received support.

7. While some delegations had expressed a preference for maintaining a separate subparagraph which would make it explicit that no communications were to be received concerning a State party which was not a party to the protocol, the Working Group agreed that such a provision was redundant and could be deleted.

Article 2

8. Some delegations expressed support for the formulation in document E/CN.6/1997/WG/L.1 which would facilitate access to the communications procedure by a potentially broad range of complainants. It was seen as a vehicle to overcome obstacles, such as illiteracy and poverty, frequently faced by women in accessing international procedures of redress for human rights violations. Some delegations noted that the article should address two issues - namely, who was entitled to submit a communication, and secondly, the scope of rights within the Committee's competence.

9. Various options for dealing with the question of who had standing were proposed. It was proposed that the article, in two subparagraphs, should address victims (i.e., those whose rights had allegedly been violated). Some delegations suggested that those rights should be directly violated. A second subparagraph should indicate who might submit communications on behalf of a victim or victims. Others suggested that the article should incorporate a third component and provide those "having sufficient interest" but who were neither direct victims of a violation nor acting on their behalf with the right to submit a communication.

10. Some delegations favoured the approach of the first Optional Protocol to the International Covenant on Civil and Political Rights which grants standing to individuals only. Others envisaged the possibility of standing for groups of individuals, which was incorporated in the Covention on the Elimination of All Forms of Racial Discrimination, but not for groups per se. Others were in

favour of allowing communications from individuals and groups, and other delegations wished to include the possibility of communications from organizations.

11. Those favouring standing for individuals or groups of individuals only argued that the main purpose of an optional protocol to CEDAW should be to provide a remedy for violations of the rights of individuals. They expressed the view that groups or organizations, as such, were not the holders of human rights and could not be direct victims of a violation of the Convention. They indicated that only identifiable individuals comprising the group or organization were victims of a violation and thus be entitled to submit a communication.

12. Some delegations were of the view that organizations should be granted the right to submit communications but that the groups or organizations entitled to do so should be limited to, for example, groups or organizations with an interest in women's rights. Others noted that such a limitation would exclude communications from many organizations that do not specialize in women's issues but which might initiate important communications.

13. Some delegations supported the inclusion in article 2 of standing for representatives of alleged victims and suggested that there should be a possibility for communications to be submitted on behalf of a victim or victims. A number of delegations noted that there was no need to make explicit provision for representation in the optional protocol, since such a right was automatically part of the right to complain. The formulation found in other instruments providing for the submission of a communication "on behalf of" an individual or individuals encompassed situations where the individual was not in a position to submit a communication. Some delegations suggested that the right of communication should be confined to victims and that submission of communications on behalf of victims should be allowed in exceptional cases only. Other delegations suggested that the question of whether victims could be represented by third parties in the absence of their consent should be considered.

14. Some delegations suggested that allowing groups with sufficient interest to submit communications would address situations where groups of women - for example, women who had been trafficked - had suffered violations. It was also suggested that such a procedure could also be of value in the light of the many obstacles women faced in effectively using available means for claiming their rights. A number of delegations were doubtful whether those with "sufficient interest" in the matter but who were not directly affected or acting on behalf of an individual or individuals directly affected should be entitled to submit communications.

15. Some delegations favoured the inclusion of standing for groups with sufficient interest in order to address systemic and widespread situations of violations of women's rights. Such communications could potentially benefit large numbers of women but without identifying a specific group of victims. Others noted that, in their view, the main purpose of a communications procedure was to deal with violations of the rights of individuals and thus they did not

favour such an expansion of standing. Such situations, it was felt, might be better addressed through an inquiry procedure.

16. Many delegations supported the view that communications would need to allege a violation of rights contained in the Convention. Other delegations were in favour of adding that failure of the State party to comply with its obligations under the Convention should also provide a basis for submitting a communication. Some delegations suggested that that would emphasize the comprehensive framework of the Convention which covered a broad range of rights, thus making it a tool for addressing systemic and structural causes of discrimination.

17. Some delegations argued that a failure to comply with the obligations in the Convention was a violation of rights and therefore saw no need for its explicit inclusion. The point was made that it was unusual for individuals to submit communications regarding the failure of States parties to comply with obligations under the Convention.

18. Some delegations pointed out that the scope of the Convention covered more than clearly identifiable rights of individuals. Inclusion of a failure-to-comply provision would make it clear that the Committee was empowered to deal not only with situations of direct violations but also with failures of States parties to take measures to implement the Convention. It was also noted that, instead of referring to failure of States parties to comply with obligations, reference to the fact that violations could arise from either acts or omissions would be sufficient to cover that concern.

19. A number of delegations noted that only victims subject to the jurisdiction of the State party should be entitled to submit a communication. Many delegations stressed the fact that women refugees and migrant women would be included within that category.

20. While some delegations favoured inclusion of a reference in article 2 to the requirement of exhaustion of domestic remedies as a precondition to submission of a communication, others argued that all admissibility criteria ought to be contained in a later article - namely, article 4.

Article 3

21. Many delegations expressed support for the formulation proposed in document E/CN.6/1997/WG/L.1 as it was similar to language used in comparable existing international procedures. Some delegations noted that inclusion of language requiring transmission of admissible communications to the State party concerned was dealt with in a later article and thus did not need to be addressed at the current stage. The Working Group adopted the article ad referendum.

Article 4

22. In considering admissibility criteria, many delegations expressed support for an approach which would place the optional protocol on an equal footing with

similar international procedures. They noted that a higher admissibility threshold than in other procedures would be discriminatory to women.

23. The Working Group considered the possibility of combining all admissibility criteria - i.e., articles 3 and 4 - into one single article. It was, however, found that the criteria contained in article 3 were preconditions of receivability of a communication rather than admissibility criteria strictu sensu.

24. The Working Group attempted to combine the admissibility criteria of article 4 under one chapeau but found that to be difficult. Many delegations expressed support for the formulation contained in article 4 (1) of document E/CN.6/1997/WG/L.1. It was noted that a formulation which would require the Committee its 1f to ascertain whether certain criteria were met was potentially too burdensome. Therefore, a formulation should be sought in the chapeau which would lead to a declaration of inadmissibility on the face of the communication.

25. The Working Group agreed ad referendum on the inclusion of a number of admissibility criteria, including the following: that a communication not be incompatible with the provisions of the Convention; that it not be an abuse of the right to submit a communication; and that available domestic remedies be exhausted. To the third, some delegations suggested the addition of the notion that such exhaustion be determined in accordance with generally recognized rules of international law, whereas others felt that a more specific qualification should be added which would cover the ineffectiveness or undue prolongation of such domestic remedies. Others noted that no qualification should be added. It was also suggested that it should be the duty of the petitioner to establish the ineffectiveness of domestic remedies.

26. Some delegations suggested that a criterion covering manifestly ill-founded communications be included. A number of delegations noted that such a criterion, while found in a number of regional instruments, was not to be found in any comparable international procedure. While some delegations proposed the addition of obviously political motivation as a criterion of inadmissibility, many others suggested that that was a particular example of an abuse of the right to submit a communication and argued that specificity was unnecessary. Other delegations argued that the submission of unfounded accusations and distorted facts formed the core of an abuse of the right to petition granted under an optional protocol of that nature and should thus be explicitly included as inadmissibility criteria.

27. While some delegations proposed the inclusion of an admissibility criterion covering the non-retroactive applicability of the optional protocol, other delegations argued that, by definition, international treaties were non-retroactive and the inclusion of such a criterion was unnecessary. A number of delegations pointed out that violations that continued after the entry into force of the optional protocol were not affected by the principle of non-retroactivity.

28. The Working Group agreed ad referendum to include a criterion covering inadmissibility for reasons of duplication of procedures. In that regard, some delegations considered that only a simultaneous examination by a procedure of

international investigation or settlement should be precluded, whereas others argued that both the simultaneous and a subsequent examination of the matter should be precluded. The point was made that since the adoption of the first optional protocol to the International Covenant on Civil and Political Rights, which precluded simultaneous examination only, other similar procedures had entered into force, thus justifying the exclusion of both a simultaneous and a subsequent, examination of the same matter. Some delegations argued that communications could be brought which might fall within the competence of different treaty bodies or where gender issues were only one aspect of a communication. In that regard, the role of the Secretariat in registering and channelling communications to treaty bodies was noted.

29. The point was made that consideration of a communication by any other international procedure should be precluded from the moment such a communication had been taken note of by an international procedure. Some delegations emphasized the need for coordination among international human rights mechanisms.

30. The Working Group agreed that it would be inappropriate to provide the Committee with the competence to determine that another procedure of international investigation or settlement was unduly prolonged. Some delegations suggested that a reference to the Committee's own prior consideration of the same, or of substantially the same, matter should be included as a ground of inadmissibility. Others suggested that that would be unnecessary since such cases would be covered under the abuse of the right to submit a communication.

31. Some delegations suggested that the principles of objectivity and impartiality, which were widely accepted in the field of human rights, should be included as a criterion of admissibility. Other delegations noted that they could not agree to the inclusion of an admissibility criterion addressing principles of objectivity and impartiality.

Article 5

32. Many delegations were in favour of an explicit inclusion of a provision relating to interim measures in the optional protocol since such a provision was in accordance with the current practice of similar international procedures. They considered that its inclusion in the optional protocol would constitute a progressive codification of international human rights law and would add to the transparency of the procedure. Some delegations recalled that interim measures were addressed in the rules of procedure of other international procedures and suggested that it be left to the Committee to include that matter in its rules of procedure.

33. Many delegations expressed a preference for language which would enable the Committee to "recommend" such measures, as opposed to requesting them, as currently formulated in document E/CN.6/1997/WG/L.1. Other delegations pointed out that the use of the term "recommend" would differ from the language used in the practice of other treaty bodies and, therefore, the term "request" should be retained. Several delegations noted that interim measures were of an

extraordinary nature, similar to comparable measures in many domestic legal systems and, as such, were likely to be used sparingly.

34. Many delegations suggested deletion of the term "preservation of the status quo" as it was unclear and implicitly contained in the concept of avoidance of irreparable harm. Other delegations argued that the preservation of the status quo was a well-known concept in domestic law, which complemented the concept of avoidance of irreparable harm. Several delegations noted that other treaty bodies used the term "damage", as opposed to the term "harm" in document E/CN.6/1997/WG/L.1, and suggested that the two terms be clarified further.

35. A number of delegations noted that a request for interim measures might suggest prejudgement of the outcome of the consideration of a communication. Some delegations noted that a request for interim measures would not in any way imply a determination on the merits of a communication or, as the case may be, of its admissibility. They proposed the addition of a paragraph which would make that explicit.

36. As to the inclusion of a provision which would call on the State party to act in accordance with the Committee's request for interim measures (article 5 (2)), many delegations considered that the formulation for such a provision would need to be carefully considered. Many delegations expressed a preference for deleting the provision altogether, rather than for a reformulation of the existing language.

Article 6

37. The CEDAW resource person noted the vulnerability of complainants of violations of rights and the particular risks to women in that regard. Some delegations expressed support for the formulation as contained in article 6 (1) of document E/CN.6/1997/WG/L.1. Other delegations recognized the need to reveal the victim's identity to the State party concerned in order to enable the State party to provide explanations to the Committee and a remedy to the complainant. Therefore, they suggested that the revelation of the person's identity should be the rule, as knowledge of the identity of the author by the State party was essential for providing an effective remedy. Some delegations stated that the complainant's express consent prior to revealing her identity was essential to the procedure, especially to ensure the petitioner's safety and to protect her from reprisals. Other delegations noted that the need for protecting the victim could be addressed by withholding her identity temporarily during the period of interim measures. Others considered that permanent withholding of the author's identity would need to be the exception. Some delegations suggested that such exception could be addressed in the Committee's rules of procedure.

38. Some delegations proposed that, rather than requiring the victim's express consent prior to revealing her identity to the State party, the victim should be required to object to the revelation of her identity expressly.

39. While some delegations argued for deletion of the first part of article 6 (1) as being superfluous, other delegations noted that the sentence

reflected a carefully balanced sequence in the timing of the steps the Committee would take in the consideration of communications.

40. It was pointed out that in a number of articles of document E/CN.6/1997/WG/L.1 reference was made to "the author", whereas similar instruments use the terms "individual" or "petitioner", and it was suggested that those terms be used. Some delegations suggested that "victim" be used either in addition to or instead of "author". It was noted that the decision on the question of standing in article 2 would determine which term should be used consistently throughout the protocol.

41. As to time limits for submission of information by the State party to the Committee on a transmitted communication, some delegations were in favour of three months, whereas others expressed a preference for six months.

42. Some delegations welcomed the explicit inclusion of a provision in the optional protocol allowing a settlement at any time before a decision on the merits by the Committee. Noting the comments of the CEDAW resource person with regard to the constructive role of the CEDAW Committee, some delegations welcomed the inclusion of such a provision as a modern means of dispute resolution and as encouraging a friendly settlement between the parties. While a settlement would be based on a full disclosure of facts by both parties, there would be no expression of views by the Committee but instead a statement of a successful resolution of an issue. Other delegations pointed out that the Committee's potential role as mediator might prevent it from playing its proper role under a communications procedure. They suggested that it should be left to the Committee to address such a role in its rules of procedure. Support was expressed for the addition of language which would allow the Committee to indicate clearly that a settlement had been reached in a matter.

Article 7

43. Some delegations proposed the deletion of any reference to "other sources" of information. Some noted that other sources of information could, if so desired, be channelled into the process through cooperation with either the State party or the author, thus making broadening access to other sources of information unnecessary. It was suggested that that could be left to the Committee to include in its rules of procedure, as was the case with other treaty bodies. Other delegations pointed out that a certain specificity with regard to such other sources of information might be necessary and proposed to limit it to information available from United Nations sources - for example, the reports of special rapporteurs in the field of human rights. Still other delegations expressed support for maintaining the paragraph in its current formulation, without restrictions, referring in particular to the explanations of the CEDAW resource person in that regard. They noted that any information obtained from other sources would, in any case, be transmitted to both parties for comment.

44. While many delegations favoured the use of written information only in the examination of a communication, some suggested that that issue should be left to the Committee to determine. Oral testimony should be permitted, if the

Committee so decided. The point was made that the formulation that information would be made available to the Committee by "or on behalf of" the author and the State party suggested that unrelated third parties would be entitled to provide information, which could make the process potentially overwhelming; the formulation thus needed to be further considered.

45. The Working Group agreed ad referendum on article 7 (2) of document E/CN.6/1997/WG/L.1.

46. While many delegations expressed support for the formulation contained in article 7 (3) of document E/CN.6/1997/WG/L.1, other delegations noted that no reference should be made either to the adoption by the Committee of its views or to its recommendations. In that regard it was noted by some delegations that the current formulation reflected the sequence of actions taken by the Committee and established practice of other treaty bodies. They also pointed out that the paragraph dealt with the conclusion of the Committee's examination of a communication - i.e., after the State party had been given the opportunity to submit its comments and information to the Committee.

47. Some delegations proposed the addition of a paragraph which would allow the State party concerned to participate in proceedings before the Committee, in accordance with the practice under certain international conventions. Other delegations noted that the procedures referred to were of a different type - i.e., inter-State procedures, rather than communications procedures. They could therefore not support such a proposal. They emphasized that the practice of similar mechanisms was essentially written in nature. Some delegations noted that if there were to be a provision allowing oral presentation by the State party, the same right would need to be granted to the petitioner in order to ensure equality in arms.

Article 8

48. While several delegations expressed support for the article as contained in document E/CN.6/1997/WG/L.1, other delegations considered that the inclusion of such a provision in the optional protocol would represent a major step which needed careful consideration. Still other delegations considered the article to be redundant and proposed its deletion, doubting the appropriateness of a provision which would allow the Committee to request States parties to take specific remedial measures. Several delegations noted that States parties were, in any case, under an obligation to remedy violations, and therefore saw no reason for explicitly including such a provision in the optional protocol.

49. Some delegations noted that the essence of article 8 (1) was already reflected in article 7 (3) of document E/CN.6/1997/WG/L.1 and should therefore be merged with it. It was also suggested by some delegations that the question of remedial measures should be regulated in the Committee's rules of procedure and left to the practice of the Committee.

50. Several delegations were in favour of maintaining explicit language regarding the State party's obligation to provide an appropriate remedy, including adequate reparation. They pointed out that the inclusion of such a

provision in the optional protocol would be a contribution by the Working Group to the progressive development of international law with regard to the right to reparation for human rights violations.

51. Many delegations expressed support for the intent reflected in article 8 (3) of document E/CN.6/1997/WG/L.1, which would build on the existing practice under similar existing procedures of continuing dialogue between the Committee and the State party after the determination of a communication and the finding of a violation. At the same time, several delegations suggested that the intent of the provision be added to article 7, in a new article 7 (4), rather than remaining in article 8.

52. Several delegations expressed their concern that the proposal on follow-up to concluded communications might establish a parallel procedure to the reporting procedure in article 18 of the Convention and that that should be avoided. They suggested that the State party ought to be given an opportunity to provide its comments on the Committee's views with regard to a concluded communication, so as to allow for a reflection of a State party's potential disagreement with the Committee's views in the Committee's annual report. Other delegations noted that States parties would be requested to provide their comments and information at all of the various stages of the consideration of a communication.

53. Some delegations suggested that any follow-up, including follow-up on measures taken by the State party, should be included in the periodic reports of that State party. Other delegations noted that the reporting procedure and the communications procedure under an optional protocol, including any follow-up to the views of the Committee, were two separate procedures which ought to be kept separate. The long period of time between periodic reports would make any follow-up to communications through the reporting process less meaningful.

Article 9

54. Several delegations underlined the importance of including a complete follow-up mechanism in the optional protocol, noting that the absence of such a mechanism was considered a weakness in similar existing procedures. The resource person for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) underlined the importance of a continuing and constructive dialogue between the Committee and the State party.

55. As to the differences between the provisions contained in articles 8 (3) and 9 (2), it was pointed out that article 8 (3) dealt with the short-term follow-up, whereas 9 (2) would cover ongoing and long-term monitoring by the Committee in the framework of the reporting procedure of a situation that had given rise to a violation. In that regard, some delegations noted that parallel overlapping procedures should be avoided and that follow-up to the communications procedure should be limited to the steps proposed in article 9 (2), with a deletion of article 8 (3). Noting the different objectives of articles 8 (3), 9 (1), and 9 (2), several delegations supported the separate retention of the three provisions.

56. Several delegations were in favour of retaining the provisions of article 9 and stressed the importance of a dialogue between the Committee and the State party as a means of ensuring added protection to the individual in the short and long term. Some noted that the term "discuss" used in article 9 (1) was not entirely clear as it seemed to suggest an oral discussion between the Committee and the State party, which was not considered to be desirable or intended. Several delegations pointed out that article 8 (3) should be maintained as a mandatory short-term follow-up to the Committee's views on a communication, whereas article 9 (1) and (2) would cover further dialogue, if appropriate, possibly in the framework of the reporting procedure. Some delegations suggested deletion of article 9 (1), in light of doubts raised in conjunction with the appropriateness of article 8 and because it raised major issues of jurisdiction and sovereignty.

57. While agreeing on the need for a clear and simple mechanism, delegations also highlighted the need to strive for an effective mechanism which would include follow-up on the steps taken by States parties in the light of views and recommendations adopted by the Committee regarding a communication.

Articles 10 and 11

58. Many delegations expressed support for articles 10 and 11, noting that the procedure would allow the Committee to focus on the root causes of discrimination and would be valuable in those cases where individual victims who suffered over and above other women could not be identified. Some delegations suggested the inclusion of an article that, like article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, should allow the Committee, with the agreement of the State party, to visit its territory. While several delegations suggested that the time-frame in which the State party should be obliged to respond with its observations to the Committee should be six months, most delegations envisaged a three-month period.

59. Several delegations indicated that any protocol to the Convention should be confined to providing an individual communications procedure only and not contain the inquiry procedure envisaged in articles 10 and 11 of document E/CN.6/1997/WG/L.1. In so doing they suggested that the procedure could be unnecessarily confrontational, could require significant human and financial resources, and was appropriate only in the context of torture. Some delegations questioned the efficacy of an inquiry procedure of a legal nature under an optional protocol to deal with serious and/or systematic violations. They suggested that such situations might require a more political approach - for example, through the mechanisms of the Commission on Human Rights and the Commission on the Status of Women.

60. Some delegations requested further clarification on the sources of information that would trigger the process and how the veracity of that information would be assessed. Others pointed to the capacity of the procedure to encourage dialogue between the State party and the Committee and suggested that the notion of the "cooperation" of the State party should be incorporated into the procedure.

61. A number of delegations suggested that the procedure should be available where the violation was both serious and systematic. Some argued in favour of a provision in the protocol that would allow the State party to "opt out" of an obligation to submit itself to the inquiry procedure, whereas others did not favour such a provision.

Article 12

62. Although some delegations were of the view that article 12 of document E/CN.6/1997/WG/L.1 was not required in the protocol because any State that had ratified or acceded to the Convention and the protocol would be obliged to ensure that the procedures in the protocol could be accessed by all persons under its jurisdiction, most delegations supported the inclusion of an article that captured the spirit of article 12. Many delegations supported the reformulation of the provision in article 12 (a) in a positive way so as to promote the relationship of the Committee and States parties.

Article 13

63. The Working Group adopted ad referendum article 13, as contained in document E/CN.6/1997/WG/L.1.

Article 14

64. Although some delegations suggested that article 14, which would require States parties to make the protocol and its procedures known in their countries, was unnecessary since international treaties ratified or acceded to by many States were publicized in official gazettes, many delegations were in agreement with the spirit of the article, which a number noted was included in the rules of procedure of other bodies with similar proceedings. Some delegations believed that the views of the Committee should be made known to the public by the State party only. A number of delegations suggested the reformulation of the article to require the State party to make the protocol and its procedures widely known, while others suggested that it might be unduly burdensome for the State party to be required to publicize the Committee's views on individual communications and inquiries.

Article 15

65. Some delegations doubted the necessity for the inclusion of the article which would give the Committee the power to develop its own rules of procedure with regard to the procedures elaborated in the optional protocol. They noted that such a power was to be found in article 19 of the Convention on the Elimination of All Forms of Discrimination against Women. It was noted that a provision relating to rules of procedure was to be found in article 39 (2) of the International Covenant on Civil and Political Rights but not in its first Optional Protocol and that, while it might not be necessary to include such an article, the article provided useful clarity.

Article 16

66. Although there was some support for the article, a number of delegations suggested that a specific provision relating to the meeting time of the Committee so as to allow it to carry out its functions under the protocol, as proposed in article 16 of document E/CN.6/1997/WG/L.1, was inappropriate and linked to resourcing of the proposed protocol. Some delegations suggested that the provision should indicate that the Committee should meet for such a period as was necessary within its agenda to carry out its functions under the protocol.

Article 17

67. Many delegations were satisfied with article 17 as drafted in document E/CN.6/1997/WG/L.1 which addressed signature, accession to and ratification of the optional protocol. Some delegations suggested technical amendments relating to drafting and agreed that those issues should be resolved in the light of legal opinion.

Article 18

68. Many delegations were of the view that the optional protocol should enter into force after the fifth instrument of ratification or accession was lodged with the Secretary-General so that victims would be able to take early advantage of its procedures. Others suggested that wide acceptance of the optional protocol was of value and that the threshold should be 10 States parties, while a number were of the view that 20 should be required.

Article 19

69. Some delegations suggested that article 19 inappropriately sought to extend the jurisdictional reach of the Convention and should therefore be deleted. It was suggested that it be reformulated to indicate that the provisions of the protocol extend to the jurisdiction of a State party without any limitations or exceptions, while a number of delegations suggested that the formulation in document E/CN.6/1997/WG/L.1 was acceptable. Some delegations doubted the necessity for the article, and many delegations requested further information on the legal implications of the proposal.

Article 20

70. A number of delegations pointed out that the Vienna Convention on the Law of Treaties allowed reservations but prohibited any reservation which was contrary to the object and purpose of a treaty. A number of delegations supported the inclusion of article 20 which precluded any reservations to the optional protocol, noting that the Vienna Convention on the Law of Treaties permitted such an article. It was suggested that the inclusion of the article was consistent with existing international practice and would be appropriate for

a modern instrument designed for the twenty-first century. It was pointed out that the opportunity of States parties to choose not to submit to the inquiry procedure envisaged in articles 10 and 11 of document E/CN.6/1997/WG/L.1 could be addressed by way of an opt-out provision. Several delegations suggested that the optional protocol should not include an article concerning reservations. It was pointed out that, in any event, reservations to the protocol could not affect the obligations undertaken by a State party as party to the Convention. Some delegations argued for a more specific provision, which would allow specified reservations only or prohibit specified reservations.

Article 21

71. Delegations agreed with article 21 ad referendum as reflected in E/CN.6/1997/WG/L.1 which concerned amendment to the optional protocol. It was suggested that further consideration be given to paragraph 3 of article 21 which might not encompass procedural amendments which did not affect all States parties.

Article 22

72. Delegations agreed with article 22 as contained in document E/CN.6/1997/WG/L.1 with a proviso on the inquiry procedure, providing for denunciation of the protocol in principle and suggested that its language be revised to follow that of article 13 of the first Optional Protocol to the International Covenant on Civil and Political Rights. The Working Group agreed that denunciation should take effect six months after the date of receipt of notification of denunciation by the Secretary-General.

Articles 23 and 24

73. Delegations agreed with articles 23 and 24 of document E/CN.6/1997/WG/L.1 ad referendum.

Resources

74. The Working Group was aware that the entry into force of the optional protocol would have resource implications. It agreed to defer consideration of the matter until the content of the protocol became clearer and there was a basis for a more informed discussion of the matter.

Comments by a member of the Human Rights Committee

75. The Working Group was assisted by the comments of Ms. Elizabeth Evatt, member of the Human Rights Committee, who described aspects of the work of that Committee in the context of the first Optional Protocol to the International Covenant on Civil and Political Rights. She indicated that the procedure provided by the first Optional Protocol did not entitle the Human Rights Committee to pronounce on the domestic law of a country but rather allowed it to

determine whether the State party's law and practices were in compliance with its international obligations which had become binding on it because of ratification of, or accession to, a treaty. She noted that the Human Rights Committee's practice of request for interim measures had been respected by most States parties. She also noted that very few communications received by the Committee had been ruled inadmissible on the grounds of being frivolous or vexatious. She indicated that the Committee drew a distinction between domestic remedies that were available but whose application had been unreasonably prolonged and a situation where domestic remedies were essentially unavailable.